

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DONALD M. DICKINSON,	)	CASE NO.1:05CV1876
	)	
Petitioner,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
Vs.	)	
	)	
SAMUEL TAMBI, WARDEN	)	OPINION AND ORDER
	)	
Respondent.	)	

**CHRISTOPHER A. BOYKO, J:**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge that Petitioner's Motion to Amend his petition be granted, in part, and denied, in part. For the following reasons, the Court Accepts and Adopts the Magistrate Judge's Report and Recommendation.

Petitioner seeks to amend his petition to dismiss Count Two of his petition, alleging the trial court improperly imposed costs on Petitioner, and add a new count for ineffective assistance of appellate counsel. The Magistrate Judge recommends granting Petitioner's Motion to Amend in part, allowing Petitioner to dismiss Count Two of his Petition. In Petitioner's timely filed

Objection to Magistrates Report and Recommendation, he concedes Count Two should be dismissed.

The Magistrate Judge further recommends this Court deny Petitioner's Motion to Amend to add an new count for ineffective assistance of appellate counsel as Petitioner failed to present this claim to the state court. In his Objection, Petitioner concedes he failed to present this claim to any state court and his Motion to Amend to add a claim for ineffective assistance of counsel should be dismissed.

### Law and Analysis

Although Petitioner has filed an Objection to the Magistrate Judge's Report and Recommendation he does not object to the Magistrate Judge's recommendation. If no timely objection is filed, the district court does not need to review the Magistrate Judge's recommendation *de novo* but need only review it for clear error. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

The Court finds the Magistrate Judge's unopposed Report and Recommendation properly applied federal habeas law and properly determined Petitioner had failed to exhaust his state court remedies. Therefore, the Court Accepts and Adopts the Magistrate Judge's Report and Recommendation and grants, in part, Petitioner's Motion to Amend by dismissing his claim that the trial court erroneously imposed costs on Petitioner. The Court denies, in part, Petitioner's Motion to Amend his Petition to add an unexhausted claim for ineffective assistance of appellate counsel. The Court also Adopts the Recommendation of the Magistrate Judge and Orders that Petitioner shall have fifteen(15) days from the date of this Order to dismiss his Petition and return to state court to exhaust his state remedies.

Furthermore, the Court finds Petitioner's argument that the Magistrate Judge improperly denied Petitioner's Request for Leave to File Supplemental Pleading, contained in Petitioner's Objection to the Magistrate Judge's Report and Recommendation, is not properly before this Court as the denial of Petitioner's Request for Leave was not the subject of the Magistrate Judge's Report and Recommendation but was issued under a separate order. However, assuming for purposes of argument that Petitioner's Request for Leave is properly before the Court, the Magistrate Judge's reasons for denying the same were reasonable, logical and without error.

IT IS SO ORDERED.

10/19/06  
Date

Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge